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CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1950.

SAMUEL DUNKEL & CO., INC., SONDRA EGG PRODUCTS CORP., CHARLES COHEN, JULIUS COHEN, CARL EBBIGHAUSEN and SIDNEY ATLAS,
Petitioners,

AGAINST

UNITED STATES OF AMERICA,
Respondent.

No. 440

PETITIONERS' REPLY MEMORANDUM.

1. The reliance of the United States on *American Tobacco Co.* v. *United States*, 328 U. S. 781, is entirely misplaced. In that case there were two conspiracies, "reciprocally distinguishable from and independent of each other", though their objects might "partially overlap". *Id.* at 788. In the case at bar, as the Government in effect conceded and argued at trial, there is only one conspiracy. The elaborate and wholly speculative argument by the Government that there were two conspiracies contradicts the views of the prosecutor who tried his case on a diametrically opposite theory. If defendants may not be sentenced twice for one conspiracy by the device of alleging several counts in one indictment, *a fortiori* they may not be sentenced twice for one conspiracy by the use of separate indictments. *Braverman* v. *United States*, 317 U. S. 49, contemplated precisely the latter situation. We

squarely deny the proposition in the Government's brief that one conspiracy may violate a number of statutes and be separately punished under each of those statutes.

2. By relegating important contentions of the petitioners to the footnotes in its brief in opposition (p. 15, n. 10; p. 18, n. 11) the United States does not succeed in answering them.

Respectfully submitted,

ISIDOR ENSELMAN,
Attorney for Petitioners.

RICHARD F. WOLFSON,
Of Counsel.